

October 03, 2013
City Commission Room, 700 N. Jefferson, Junction City KS 66441

Mayor Cecil Aska
Vice Mayor Pat Landes
Commissioner Mick McCallister
Commissioner Jim Sands
Commissioner Michael Ryan
City Manager Cheryl Beatty
City Attorney Catherine Logan
City Clerk Tyler Ficken

1. **5:30 P.M. - CALL TO ORDER**

2. **NEW BUSINESS:**

- a. Consideration of an Employment Agreement with Gerald C. Smith for the City Manager position.

3. **ADJOURNMENT:**

Backup material for agenda item:

- a. Consideration of an Employment Agreement with Gerald C. Smith for the City Manager position.

City of Junction City

City Commission

Agenda Memo

October 3, 2013 5:30 Special Meeting

From: Katie Logan, City Attorney
To: City Commission
Subject: City Manager Employment Agreement

Issue: At the direction of the City Commission I have drafted a form of Employment Agreement with Gerald C. Smith, a candidate for City Manager. Mr. Smith has confirmed that this Employment Agreement is acceptable to him.

Attached is a form of Employment Agreement for consideration by the City Commission.

Alternatives: The City Commission may:

Approve the Employment Agreement with Gerald C. Smith

Table the item

Take no action

Possible Motion:

Move to approve Employment Agreement with Gerald C. Smith

Attachments:

City Manager Employment Agreement

EMPLOYMENT AGREEMENT

This Employment Agreement is made and entered into October __, 2013 by and between the CITY OF JUNCTION CITY, KANSAS, a Kansas municipal corporation ("City") and GERALD C. SMITH ("Employee").

WITNESSETH:

WHEREAS, City desires to employ the services of Employee as City Manager of the City; and

WHEREAS, it is the desire of the governing body, hereafter called "the City Commission," to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee;

WHEREAS, it is the desire of the City Commission (1) to provide inducement for Employee to remain in such employment, (2) to provide for future security in case Employee is terminated without cause, and (3) to provide a procedure for terminating Employee's services when City may desire to terminate his employment;

WHEREAS, Employee desires to accept employment as City Manager of the City of Junction City.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties. City hereby employs Employee as City Manager to perform the functions and duties specified in the ordinances, policies and resolutions of the City and the statutes of the State of Kansas and other proper duties and functions as the City Commission may, from time to time, assign, or the efficient management of the City shall require, and Employee accepts such employment commencing on October 14, 2013 (the "Commencement Date").

Section 2. Compensation. City agrees to pay Employee an annual salary of \$105,000.00 payable in installments in accordance with City's standard payroll procedures. City agrees to increase said annual salary of Employee in such amounts and to such extent as the City Commission may determine that it is desirable to do so on the basis of any annual salary review of said Employee made at the time of the performance evaluation specified in Section 12. Any salary increase shall be granted solely at the discretion of the City Commission.

Section 3. Employment Term.

- a. The term of this Agreement shall be two (2) years from the Commencement Date, and shall automatically renew for successive one (1) year terms thereafter (each such period being an “Employment Term”) unless (i) otherwise terminated as provided herein, or (ii) either City or Employee gives written notice of its intention not to renew this Agreement at least ninety (90) days prior to the end of the then current Employment Term.
- b. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the Employee at any time, at the sole discretion of City, with or without cause, subject to the provisions for severance payments set forth in Section 4 of this Agreement.
- c. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time. Employee shall not be entitled to any severance payments set forth in Sections 4 of this Agreement if Employee resigns.
- d. Employee agrees to remain in the exclusive employ of the City during the Employment Term.

Section 4. Termination Without Cause/Severance.

- a. The Employee's employment may be terminated at any time by the City, at the City's discretion, without cause.
- b. If the Employee's employment is terminated by the City without cause, the City shall provide a severance payment equal to six (6) months' salary at the current rate of pay. City shall not be required to provide a severance payment if employment is terminated as a result of notice of nonrenewal of this Agreement by either party. The severance payment shall be paid in a lump sum unless otherwise agreed to by the City and the Employee. Unused vacation, sick and personal leave shall be paid in accordance with the City's policies in effect at the time of termination. At Employee's election, the City agrees to make a contribution to the Employee's deferred compensation account of the value of unused vacation, sick and personal leave.

Section 5. Termination With Cause.

- a. The City may immediately terminate the Employee's employment for cause, which shall include but not be limited to, any one or more of the following:
 - i. Employee's conviction of or a guilty plea to any act of fraud, misrepresentation or a felony or a crime involving moral turpitude, or commission of any other criminal act other than minor traffic offenses

which do not reflect adversely on the City and which do not interfere with the performance of employment duties hereunder;

ii. Employee's embezzlement, misappropriation or commission of any other fraudulent act against the City;

iii. Employee's breach of the terms of this Agreement and such breach is not corrected within thirty (30) days after Employee's receipt of a written notice which identifies the manner in which City believes Employee is breaching this Agreement;

iv. Employee's commission of any other specific action causing material harm to City, its reputation or its business;

v. Any failure or refusal to perform duties stated in the ordinances or lawful policies of the City, or to comply with lawful and reasonable directives of the City, and such failure is not corrected within thirty (30) days after Employee's receipt of a written notice which identifies the manner in which the City believes Employee is not properly performing his duties under this Agreement.

b. Employee shall not be entitled to any severance pay upon termination of this Agreement for cause. Unused vacation, sick and personal leave shall be paid in accordance with the City's policies in effect at the time of termination.

Section 6. Health, Dental, Disability and Life Insurance Benefits. The City agrees to provide Employee with the same health, dental, life insurance, disability and other fringe benefits provided generally to all other employees of the City of Junction City and the contribute the same to the premiums therefor as generally contributed by the City for other employees of the City.

Section 7. Vacation, Sick and Personal Leave. Effective on the Commencement Date, the Employee shall be entitled to and shall be deemed to have accrued two weeks (80) hours of vacation time. Thereafter, vacation time and sick and personal leave shall be accrued and credited to his personal account at the same rate as other full time employees in accordance with City's standard vacation, sick and personal leave policies.

Section 8. Monthly Vehicle Allowance.

a. The City agrees to pay to the Employee, during the Employment Term and in addition to other salary and benefits herein provided, the sum of \$6,000.00 per year, payable in equal monthly installments, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all

expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The City shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater Junction City area. For purposes of this Section, use of the car within the greater Junction City area is defined as travel to locations within a fifty (50) mile radius of City Hall.

b. Per the voluntary election of the Employee, the City agrees to deposit the monthly installment of the vehicle allowance into the established deferred compensation plan addressed in Section 9 paragraph b under the same monthly installments as provided for in Section 8(a).

Section 9. Retirement

a. The City agrees to enroll the Employee into the applicable state retirement system (KPERs) and to pay the City's amount of the contribution required of the employer with respect to Employee.

b. In addition to the City's payment to the state retirement system referenced above, City agrees to execute all reasonably necessary agreements to establish a deferred compensation plan for Employee's participation in such deferred compensation plan, provided the City shall not be required to incur any cost in connection with establishing or maintaining any such plan. Within 30 days after the end of each twelve (12) month period of the Employment Term, City agrees to pay an amount equal to \$5,000 of deferred compensation per twelve (12) month period of the Employment Term into the designated plan on the Employee's behalf and Employee shall retain total ownership of all funds deposited into the plan. Except as provided in subsection (c) below, notwithstanding anything to the contrary contained in this Section 9, in the event Employee is, for any reason, no longer employed by the City on the last day of any twelve (12) month period of the Employment Term, Employee's deferred compensation for such twelve (12) month period shall be reduced to \$0.

c. The City will pay an additional \$5,000 of deferred compensation into the deferred compensation plan immediately upon receipt from the Employee of proof of residency in Junction City.

Section 10. Authorized Expenses.

a. City agrees to pay dues for Employee's membership in the Kansas Association of City Managers and the International City/County Manager Association and for City's membership in the League of Kansas Municipalities. Employer may pay the registration, travel and subsistence expenses of Employee for official travel to conferences of such organizations, including the Annual Conference of the International City/County Management Association, from funds appropriated in the City budget for such purpose. Payments of these

expenditures are subject to the availability of funds in the City budget as approved by the City Commission annually.

b. The City acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, City shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in such local civic clubs or organizations that are mutually agreed to by the Employee and City.

Section 11. Moving. Employee agrees to establish residence within the corporate boundaries of the City within three (3) months of the commencement of the Employment Term, and thereafter to maintain residence within the corporate boundaries of the City. The Employee shall not be reimbursed for the expenses of packing and moving Employee and his family from Kansas City, Missouri to Junction City, Kansas. In-lieu of temporary housing and relocation assistance and upon proof of residency, the City agrees to promptly pay \$5,000 of deferred compensation into the established deferred compensation plan as stipulated in Section 9, b and c.

Section 12. Performance Evaluation. City shall review the performance of Employee as soon as possible after the initial six (6) months of the Employment Term and furnish an oral evaluation to Employee at that time. City shall also review the performance of the Employee as soon as possible after the first twelve (12) months of the Employment Term. The annual review process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within thirty (30) days of the evaluation meeting.

Section 13. Notices.

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows (or at such other address of which such party shall have given written notice in the manner provided herein):

CITY: City of Junction City, Kansas
Attn. Mayor and City Clerk
700 North Jefferson
PO Box 287
Junction City, KS 66441

EMPLOYEE: Until Employee establishes a Residence in Junction City:
Gerald C. Smith
5933 N. Mattox Road
Kansas City, MO 64151

After Employee establishes a residence in Junction City, to Employee's residence in Junction City as recorded on City's personnel records.

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 14. General Provisions.

a. *Integration.* This Agreement sets forth and establishes the entire understanding between the City and the Employee relating to the employment of the Employee by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

b. *Binding Effect.* This Agreement shall be binding on the City and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

c. *Severability.* The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

d. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and said counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by the parties effective as of October 1, 2013.

CITY OF JUNCTION CITY

Cecil Aska, Mayor

Dated:_____

Attest:

Tyler Ficken, City Clerk

Gerald C. Smith

Dated: _____